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16 IN THE UNITED STATES DISTRICT COURT

17 DISTRICT OF ALASKA

18 MARVIN ROBERTS, GEORGE FRESE,)
19 KEVIN PEASE, and EUGENE VENT,)

20 Plaintiffs,)

21 v.)

22 CITY OF FAIRBANKS, JAMES GEIER,)
23 CLIFFORD AARON RING, CHRIS NOLAN,)
24 DAVE KENDRICK, DOE OFFICERS 1-10,)
25 and DOE SUPERVISORS 1-10,)

26 Defendants.)

Case No. 4:17-cv-00034-HRH

Case No. 4:17-cv-00035-HRH

Consolidated Cases

**DEFENDANTS' JOINT ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIM RESPONDING TO
PLAINTIFFS' SECOND AMENDED AND CONSOLIDATED COMPLAINT**

1 Defendant City of Fairbanks (the “City”), by and through its attorneys, Schwabe,
2 Williamson & Wyatt, P.C.; and James Geier (“Geier”), Clifford Aaron Ring (“Ring”),
3 Chris Nolan (“Nolan”), and Dave Kendrick (“Kendrick”), by and through their attorney
4 Joseph W. Evans, (all defendants collectively “Defendants”) hereby answer Plaintiffs’
5 Second Amended and Consolidated Complaint as follows:
6

7 **INTRODUCTION**
8

9 1. Defendants admit that John Hartman was murdered in Fairbanks on
10 October 11, 1997. All other allegations in this paragraph are denied.

11 2. Defendants admit that Plaintiffs have been referred to collectively as the
12 Fairbanks Four. All other allegations in this paragraph are denied.

13 3. Defendants are without information sufficient to admit or deny the
14 allegations in paragraph 3 and therefore deny the same.
15

16 4. Defendants are without information sufficient to admit or deny the
17 allegations in paragraph 4 and therefore deny the same.
18

19 5. Defendants are without information sufficient to admit or deny the
20 allegations in paragraph 5 and therefore deny the same.

21 6. Defendants are without information sufficient to admit or deny the
22 allegations in paragraph 6 and therefore deny the same.
23

1 7. Admit¹ that Fairbanks police officers identified plaintiffs as suspects in
2 John Hartman's murder. Admit that Vent and Frese confessed to murdering John
3 Hartman. Admit that each plaintiff was convicted by a jury of John Hartman's murder
4 and spent approximately 18 years in custody. Admit that on December 17, 2015,
5 plaintiffs' convictions were vacated and their indictments were dismissed pursuant to
6 negotiated settlement agreements. All other allegations in this paragraph are denied.
7

8 **JURISDICTION AND VENUE**
9

10 8. Admit that plaintiffs have brought this action pursuant to 42 U.S.C. § 1983.
11 All other allegations and implications in this paragraph are denied.

12 9. Admit.

13 10. Admit.

14 11. Admit.
15

16 **JURY DEMAND**

17 12. This paragraph does not set forth any allegations of fact for which an answer
18 is required.
19

20 **PARTIES**

21 13. Admit.

22 14. Admit.
23
24

25 ¹ Unless response identifies otherwise, responses are made on behalf of all Defendants.
26

1 15. Admit.

2 16. Admit.

3 17. Admit that the City is a Home Rule, First Class City and Municipal
4 Corporation organized under the laws of the State of Alaska. Admit that the City
5 employed Geier from March 1, 1993 to March 1, 2018; Ring from April 1, 1981 to May
6 2004; Nolan beginning in January 2000, but that he only worked on the Hartman case
7 starting in 2011; and Kendrick from 1975 to April 2005. Admit that the City is responsible
8 for the policies, practices, and customs of the Fairbanks Police Department (“FPD”). All
9 other allegations in this paragraph are denied.
10

11 18. Admit that Geier held the positions of Officer, Investigator, and Lieutenant
12 during his employment with FPD from March 1, 1993 to March 1, 2018. Deny that Geier
13 is currently employed as an FPD Lieutenant. Admit that Plaintiffs are suing Geier in his
14 individual capacity. The remaining allegations in Paragraph 18 are not stated with
15 sufficient particularity to permit Defendants to respond, and Defendants therefore deny
16 the same.
17

18 19. Admit that Ring was an FPD Detective from 1996 to 2004. Admit that
19 Plaintiffs are suing Detective Ring in his individual capacity. The remaining allegations
20 in Paragraph 19 are not stated with sufficient particularity to permit Defendants to
21 respond, and Defendants therefore deny the same.
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20. Admit that Nolan was an FPD Detective from June 2004 until May 2015.

Admit that Plaintiffs are suing Detective Nolan in his individual capacity. The remaining allegations in Paragraph 20 are not stated with sufficient particularity to permit Defendants to respond, and Defendants therefore deny the same.

21. Admit that Kendrick was an FPD Sergeant from 1995 to 1998. Admit that Kendrick was Detective Ring and Geier's supervisor during 1997, but deny he approved each investigative step taken or police report prepared by Ring and Geier. Admit that Plaintiffs are suing Sergeant Kendrick in his individual capacity. The remaining allegations in Paragraph 21 are not stated with sufficient particularity to permit Defendants to respond, and Defendants therefore deny the same.

22. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 22 and therefore deny the same.

FACTS

23. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 23 and therefore deny the same.

24. Defendants deny the allegations in Paragraph 24.

25. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 25 and therefore deny the same.

26. Defendants deny the allegations in Paragraph 26.

1 27. Admit that Wallace asserted his Fifth Amendment rights when questioned
2 under oath about the killing of John Hartman. Admit the State of Alaska granted Wallace
3 transactional immunity prior to his testimony at Plaintiffs' post-conviction hearing. Admit
4 that Wallace denied killing Hartman during his testimony at the post-conviction hearing.
5 All other allegations in this paragraph are denied.
6

7 28. Defendants are without information sufficient to form a belief as to the truth
8 or falsity of the allegations in Paragraph 28 and therefore deny the same.
9

10 29. Admit that Wallace confessed to and was convicted of murder, arson, and
11 third degree assault after October 11, 1997. Deny that Wallace murdered John Hartman,
12 or that the crimes for which Wallace was convicted were "in addition to" the murder of
13 John Hartman. Defendants are without information sufficient to admit or deny the
14 remaining allegations in Paragraph 29 and therefore deny the same.
15

16 30. Admit that Holmes and Brown were convicted of committing murders after
17 October 11, 1997. All other allegations in this paragraph are denied.
18

19 31. Admit that on October 13, 1997, Daniel Huntington told Geier that two days
20 prior an elderly Alaska Native man claimed that four African American men tried to
21 assault him. All other allegations in this paragraph are denied.
22

23 32. Admit that Geier was not the investigator assigned to investigate the
24 statement by Daniel Huntington. Admit Geier did not author a report provided to Alaska
25
26

1 State Troopers when they began investigating. All other allegations in this paragraph are
2 denied.

3
4 33. Admit Rubin Sam told investigator that Robert John told him a group of
5 African American men had jumped out of a small red car and tried to assault him. All
6 other allegations in this paragraph are denied.

7 34. Defendants deny the allegations in Paragraph 34.

8
9 35. Admit Ronald Stickman reported to investigator that he saw three African
10 American teenagers running away from an Indian man lying on the sidewalk. All other
11 allegations in this paragraph are denied.

12 36. Defendants deny the allegations in Paragraph 36.

13
14 37. Admit Elijah “Don” Moses reported he was the victim of an attempted
15 mugging the night of the Hartman murder. All other allegations in Paragraph 37 are
16 denied.

17 38. Defendants deny the allegations in Paragraph 38.

18 39. Defendants deny the allegations in Paragraph 39.

19
20 40. Admit Ring and Geier were investigators. Admit Kendrick was present
21 during Frese interview. All other allegations in Paragraph 40 are denied.

22 41. Admit Vent was arrested for assault and that a gun was not found in his
23 possession. All other allegations in Paragraph 41 are denied.
24
25
26

1 42. Defendants are without information sufficient to admit or deny the
2 allegations in Paragraph 42 and therefore deny the same.

3 43. Admit that Vent was arrested near the location where Hartman's body was
4 found. All other allegations in this paragraph are denied.

5 44. Ring admits that he initially interviewed Vent as a result of an altercation at
6 or around the Alaska Motor Inn. The remaining defendants are without information
7 sufficient to admit or deny the allegations in the first sentence of paragraph 44 and
8 therefore deny the same. Ring denies all other allegations in this paragraph.
9

10 45. Admit Ring conducted interviews of Vent. All other allegations in this
11 paragraph are denied.
12

13 46. Defendants deny the allegations in Paragraph 46.
14

15 47. Ring admits Vent called his mother. Defendants are without information
16 sufficient to admit or deny Vent's prior experience with police interrogation or Vent's
17 mental comprehension of the interview and therefore deny the same. All other allegations
18 in this paragraph are denied.
19

20 48. Ring admits inquiring if it were possible that any witnesses saw Vent at the
21 scene. Ring denies all other allegations in the paragraph. The remaining defendants are
22 without information sufficient to admit or deny the allegations in Paragraph 48, and
23 therefore deny the same.
24

1 49. Admit that Vent confessed to murdering John Hartman. All other
2 allegations in this paragraph are denied.

3
4 50. Ring admits that Vent placed the “X” where the assault occurred on a
5 diagram drawn by Ring. Ring denies all other allegations contained in the paragraph. The
6 remaining defendants are without information sufficient to admit or deny the allegations
7 in Paragraph 50 and therefore deny the same.

8
9 51. Ring denies the allegations contained in Paragraph 51. The remaining
10 defendants are without information sufficient to admit or deny the allegations in Paragraph
11 51 and therefore deny the same.

12 52. Ring and Kendrick deny the allegations contained in Paragraph 52. The
13 remaining defendants are without information sufficient to admit or deny the allegations
14 in Paragraph 52 and therefore deny the same.

15
16 53. Kendrick and Ring admit Frese was interviewed while in the hospital with
17 an injured foot. Kendrick and Ring deny all other allegations in this paragraph. The
18 remaining defendants are without information sufficient to admit or deny the allegations
19 in Paragraph 53 and therefore deny the same.

20
21 54. Admit that Frese made inculpatory statements about his involvement in the
22 Hartman murder. All other allegations in this paragraph are denied.

1 55. Ring denies the allegations contained in Paragraph 55. The remaining
2 defendants are without information sufficient to admit or deny the allegations in Paragraph
3 55 and therefore deny the same.
4

5 56. Defendants deny all allegations contained in Paragraph 56.

6 57. Admit that the trial court admitted some of Frese's inculpatory statements
7 and suppressed others. All other allegations in this paragraph are denied.
8

9 58. Defendants are without information sufficient to admit or deny the
10 allegations in Paragraph 58 and therefore deny the same.

11 59. Admit that Olson reported and testified about witnessing an assault on
12 Franklin Dayton outside of Eagles Hall. All other allegations in this paragraph are denied.
13

14 60. Ring admits that a note was left for Olson. Ring denies the remainder of
15 the allegations contained in Paragraph 60. The remaining defendants are without
16 information sufficient to admit or deny the allegations in paragraph 60 and therefore deny
17 the same.
18

19 61. Defendants deny the allegations contained in Paragraph 61.

20 62. Kendrick denies the allegations contained in Paragraph 62. The remaining
21 defendants are without information sufficient to admit or deny the allegations contained
22 in Paragraph 62 and therefore deny the same.
23

24 63. The requirements of Alaska law are a legal conclusion for which no
25 response is required. Defendants deny the allegations contained in Paragraph 63.
26

1 64. Kendrick, Ring, and Geier deny the allegations contained in Paragraph 64.
2 Nolan and the City are without information sufficient to admit or deny the allegations
3 contained in Paragraph 64 and therefore deny the same.
4

5 65. Defendants deny the allegations contained in Paragraph 65.

6 66. Admit recording the interview of Olson. Deny the remaining allegations
7 contained in Paragraph 66.
8

9 67. Admit that Olson reported having seen Plaintiffs together in Robert's blue
10 car when they offered him marijuana outside Eagles Hall and when they assaulted Dayton.
11 All other allegations in this paragraph are denied.

12 68. Ring admits to recording Olson's statements and providing them to the
13 prosecution. Ring denies all other allegations in this paragraph. The remaining
14 defendants are without information sufficient to admit or deny the allegations contained
15 in Paragraph 68 and therefore deny the same.
16

17 69. Admit that Frese and Vent gave confessions that the State of Alaska used
18 as evidence to secure their indictments for Hartman's murder and Dayton's assault. All
19 other allegations in this paragraph are denied by Defendants.
20

21 70. Geier and Ring deny the allegations in Paragraph 70. The remaining
22 defendants are without information sufficient to admit or deny the allegations contained
23 in Paragraph 70 and therefore deny the same.
24

25 71. Defendants deny the allegations in Paragraph 71.
26

1 72. Admit Olson committed suicide. Olson's purported affidavit is a written
2 document and its contents would speak for itself. Defendants lack information sufficient
3 to admit or deny the remainder of the allegations contained in Paragraph 72 and therefore
4 deny the same.
5

6 73. Defendants deny the allegations in Paragraph 73.

7 74. Defendants deny the allegations in Paragraph 74.

8 75. Defendants deny the allegations in Paragraph 75.

9 76. Admit that Mr. Hartman's murder generated public interest and that the
10 City and FPD prioritized solving the murder. All other allegations in this paragraph are
11 denied.
12

13 77. Defendants lack information sufficient to admit or deny the allegations in
14 Paragraph 77 and therefore deny the same.
15

16 78. Defendants deny the allegations in Paragraph 78.

17 79. Defendants deny the allegations in Paragraph 79.

18 80. Defendants deny the allegations in Paragraph 80.

19 81. Defendants deny the allegations in Paragraph 81.

20 82. Admit that Mr. Dayton at one point described one of his assailants as
21 wearing white shoes. All other allegations in this paragraph are denied.
22

23 83. Admit that forensic evidence was collected from the crime scene and
24 analyzed. All other allegations in this paragraph are denied.
25

1 84. Admit that Deputy State Medical Examiner Franc Fallico testified at each
2 Plaintiff's trial. Mr. Fallico's testimony is a matter of public record and its content speaks
3 for itself. Deny that Mr. Fallico was an employee or agent of the City of that the City had
4 any role in selecting witnesses for trial. All other allegations in this paragraph are denied.
5

6 85. Defendants deny the allegations in Paragraph 85.

7 86. Admit that Lesley Hammer testified as a part of Plaintiffs' post-conviction
8 proceeding. Mr. Hammer's testimony is a matter of public record and its content speaks
9 for itself. All other allegations in this paragraph are denied.
10

11 87. Defendants deny the allegations in Paragraph 87.

12 88. Defendants deny the allegations in Paragraph 88.

13 89. Admit that Kendrick assembled the shoe-print overlay. Defendants deny
14 the remaining allegations in the paragraph.
15

16 90. Defendants deny the allegations in Paragraph 90.

17 91. Defendants deny the allegations in Paragraph 91.

18 92. Admit that Plaintiffs were each convicted of murder, robbery and assault
19 following three separate jury trials. Admit that Roberts was sentenced to 33 years in
20 prison, Vent was sentenced to 40 years, with 10 suspended, Frese was sentenced to 97
21 years, with 20 suspended, and Pease was sentenced to 70 years, with 15 suspended. Admit
22 that Plaintiffs each served approximately 18 years in custody for the crimes for which they
23 were convicted. All other allegations in this paragraph are denied.
24
25
26

1 93. Admit that Jahna Lindemuth was the Alaska Attorney General at the time
2 Plaintiffs filed their Second Amended Complaint. Admit that Ms. Lindemuth represented
3 Mr. Roberts in his application for post-conviction relief (“PCR”) before she became
4 Attorney General. Defendants are without information sufficient to admit or deny the
5 remaining allegations in Paragraph 93 and therefore deny the same.
6

7 94. Defendants deny all allegations, inferences and implications contained in
8 Paragraph 94.
9

10 95. Defendants deny the allegations in Paragraph 95.

11 96. Admit that Mr. Torquato prepared a memo purporting to memorialize
12 statements made by William Holmes, and that the memo was subsequently forwarded to
13 FPD. The Torquato memo speaks for itself and is the best evidence of its contents. All
14 other allegations in this paragraph are denied.
15

16 97. Admit Nolan was informally asked to look into the Holmes 2011 confession
17 claim. All other allegations in this paragraph are denied.
18

19 98. Admit Nolan forgot to follow-up on an email concerning the alleged
20 Holmes 2011 confession. Admit FPD did not contact Holmes or Torquato between 2011
21 and Plaintiffs’ filings for PCR. Deny remainder of the allegations contained in
22 Paragraph 98.
23

24 99. Defendants deny that Holmes’s confession led to the Fairbanks Four’s
25 exonerations. The Fairbanks Four were not exonerated but instead obtained their release
26

1 through a negotiated settlement. Defendants are without information sufficient to admit
2 or deny the remaining allegations in Paragraph 99 and therefore deny the same.

3
4 100. Admit that Nolan told Geier about Holmes' alleged 2011 confession after
5 Plaintiffs filed for post-conviction relief. Admit the State reviewed and was investigating
6 the PCR allegations. Admit that Geier originally believed the Torquato memo had been
7 found on the internet. Deny the reminder of the allegations contained in Paragraph 100,
8 including that Plaintiffs were exonerated.

9
10 101. Admit that Mr. McPherron testified at the PCR hearing. Mr. McPherron's
11 testimony speaks for itself and is the best evidence of its contents. Deny that Adrienne
12 Bachman was an employee or agent of the City. Defendants are without information
13 sufficient to admit or deny the remaining allegations in Paragraph 101 and therefore deny
14 the same.

15
16 102. The allegations in Paragraph 102 state a legal conclusion to which no
17 response is required. To the extent a response is required to any part of the allegations in
18 Paragraph 102, the allegations are denied.

19
20 103. The City is continuing to investigate the allegations surrounding the
21 submission of a records request contained in Paragraph 103. Until such time as
22 information becomes known to the City to allow it to further respond, it denies the
23 allegations contained in Paragraph 103. The remaining defendants are without
24

1 information sufficient to admit or deny the allegations in Paragraph 103 and therefore
2 deny the same.

3
4 104. Admit that FPD and an Alaska State Trooper investigator conducted a
5 recorded interview of Takory Stern. All other allegations in Paragraph 104 are denied.

6 105. Defendants deny all allegations, implications and inferences contained in
7 Paragraph 105.

8
9 106. Admit that Plaintiffs applied to the Alaska Superior Court for post-
10 conviction relief claiming there was newly discovered evidence that proved their actual
11 innocence. Defendants are without information sufficient to admit or deny the remaining
12 allegations in Paragraph 106 and therefore deny the same.

13
14 107. The allegations in Paragraph 107 state a legal conclusion to which no
15 response is required. To the extent a response is required, the allegations are denied.

16 108. Admit that the Court denied a motion filed by the State to dismiss post-
17 conviction relief claims related to previously litigated expert witnesses and ruled that the
18 petitions stated a prima facie case of actual innocence. All other allegations in Paragraph
19 108 are denied.

20
21 109. Admit that the Superior Court conducted a 25-day evidentiary hearing
22 giving Plaintiffs an opportunity to prove their actual innocence. The testimony and
23 evidence adduced at the hearing speaks for itself and is the best evidence of its contents.
24 All other allegations, implications and inferences in Paragraph 109 are denied.

1 110. Defendants deny the allegations in Paragraph 110.

2 111. Defendants deny the allegations in Paragraph 111.

3 112. Defendants deny the allegations in Paragraph 112.

4 113. The allegations in Paragraph 113 assert legal conclusions to which no
5 response is required. To the extent a response is required, the allegations in Paragraph
6 113 are denied.

7 114. Defendants deny the allegations in Paragraph 114 and the City denies that
8 it played any role whatsoever or provided any input to the State of Alaska with respect to
9 its handling of Plaintiffs' post-conviction relief proceedings.

10 115. Defendants admits that Jason Gazewood was an attorney for Jason Wallace.
11 All other allegations in Paragraph 115 are denied.

12 116. Comments made by the presiding judge on the record at the PCR hearing
13 are a matter of public record and speak for themselves. The City denies that it was
14 represented or participated at the PCR hearing. All other allegations in Paragraph 116 are
15 denied.

16 117. Admit that the State of Alaska and Plaintiffs engaged in negotiations to
17 settle Plaintiffs' applications for post-conviction relief. Deny that the City participated or
18 played any role in those negotiations until after the agreement was fully negotiated and
19 executed by Plaintiffs and the State. All other allegations in Paragraph 117 are denied.

20 118. Defendants deny the allegations in Paragraph 118.

1 119. Defendants deny the allegations in Paragraph 119.

2 120. Defendants are without information sufficient to admit or deny allegations
3
4 pertaining to Plaintiffs' subjective expectations and therefore deny the allegations in
5 Paragraph 120.

6 121. Defendants are without information sufficient to admit or deny the
7 allegations in Paragraph 121 and therefore deny the same.

8 122. Admit.

9
10 123. Defendants deny the allegations in Paragraph 123.

11 124. The allegations in Paragraph 124 state a legal conclusion to which no
12 response is required. To the extent a response is required, the allegations are denied.

13 125. The allegations in Paragraph 125 state a legal conclusion to which no
14 response is required. To the extent a response is required, all allegations, implications and
15 inferences contained in Paragraph 125 are denied.

16 126. The allegations in Paragraph 126 state a legal conclusion to which no
17 response is required. To the extent a response is required, all allegations, implications and
18 inferences contained in Paragraph 126 are denied.

19 127. The allegations in Paragraph 127 state a legal conclusion to which no
20 response is required. To the extent a response is required, all allegations, implications and
21 inferences contained in Paragraph 127 are denied.

1 128. The allegations in Paragraph 128 state a legal conclusion to which no
2 response is required. To the extent a response is required, all allegations, implications and
3 inferences contained in Paragraph 128 are denied.
4

5 129. The allegations in Paragraph 129 state a legal conclusion to which no
6 response is required. To the extent a response is required, all allegations, implications and
7 inferences contained in Paragraph 129 are denied.
8

9 130. The allegations in Paragraph 130 state a legal conclusion to which no
10 response is required. To the extent a response is required, all allegations, implications and
11 inferences contained in Paragraph 130 are denied.
12

13 131. Defendants deny the allegations in Paragraph 131.

14 132. Admit.

15 133. Deny that Plaintiffs were exonerated. Defendants are investigating the
16 remainder of the allegations included in Paragraph 133 and until such time as Defendants
17 have sufficient information to respond to the allegations, Defendants deny the allegations
18 contained in Paragraph 133.
19

20 134. Defendants deny the allegations in Paragraph 134.

21 135. Admit that Roberts was no longer incarcerated when he signed the release
22 dismissal agreement. All other allegations in this paragraph are denied.
23

24 136. Defendants deny the allegations in Paragraph 136.

25 137. Defendants deny the allegations in Paragraph 137.
26

1 138. Defendants are without information sufficient to admit or deny the
2 allegations in Paragraph 138 and therefore deny the same.

3 139. Defendants deny the allegations in Paragraph 139.

4 140. Defendants deny the allegations in Paragraph 140.

5 141. The allegations in Paragraph 141 state a legal conclusion to which no
6 response is required. To the extent a response is required, the allegations are denied.
7

8 142. Defendants deny the allegations in Paragraph 142.

9 143. Defendants deny the allegations in Paragraph 143.

10 144. Defendants deny the allegations in Paragraph 144.

11 145. Defendants deny the allegations in Paragraph 145.

12 146. Defendants are without information sufficient to admit or deny the
13 allegations in Paragraph 146 and therefore deny the same.
14

15 147. Defendants are without information sufficient to admit or deny the
16 allegations in Paragraph 147 and therefore deny the same.
17

18 148. Defendants are without information sufficient to admit or deny the
19 allegations in Paragraph 148 and therefore deny the same.
20

21 149. Defendants are without information sufficient to admit or deny the
22 allegations in Paragraph 149 and therefore deny the same.
23

24 150. Defendants are without information sufficient to admit or deny the
25 allegations in Paragraph 150 and therefore deny the same.
26

1 151. Defendants are without information sufficient to admit or deny the
2 allegations in Paragraph 151 and therefore deny the same.

3 152. Defendants deny the allegations in Paragraph 152.

4 153. Defendants deny the allegations in Paragraph 153.

5 154. The allegations in Paragraph 154 state a legal conclusion to which no
6 response is required. To the extent a response is required, the allegations are denied.
7

8 155. Defendants deny the allegations in Paragraph 155.

9 156. Defendants deny the allegations in Paragraph 156.

10 157. Defendants deny the allegations in Paragraph 157.

11 158. Defendants are without information sufficient to admit or deny the
12 allegations in Paragraph 158 and therefore deny the same.
13

14 159. Defendants deny the allegations in Paragraph 159.

15 160. Defendants are without information sufficient to admit or deny the
16 allegations in Paragraph 160 and therefore deny the same.
17

18 161. Defendants deny the allegations in Paragraph 161.

19 162. Defendants deny the allegations in Paragraph 162.

20 163. Admit that Frese and Pease signed a settlement agreement resolving their
21 applications for post-conviction relief. All other allegations in this paragraph are denied.
22
23
24
25
26

1 164. The allegations in Paragraph 164 state a legal conclusion to which no
2 response is required. To the extent as response is required, the allegations in Paragraph
3 164 are denied.
4

5 165. Defendants deny the allegations in Paragraph 165.

6 166. Defendants deny the allegations in Paragraph 166.

7 167. Defendants deny the allegations in Paragraph 167.

8 168. Defendants deny the allegations in Paragraph 168.

9 169. Defendants deny the allegations in Paragraph 169.

10 170. Admit that Superior Court Judge Lyle made comments about his role in
11 effectuating the settlement agreement between the State and Plaintiffs. Judge Lyle's
12 comments are a matter of public record, speak for themselves, and are the best evidence
13 of their contents. Defendants otherwise deny the allegations in Paragraph 170.
14

15 171. Admit.
16

17 172. The allegations in Paragraph 172 state a legal conclusion to which no
18 response is required. To the extent a response is required, the allegations are denied.
19

20 173. Defendants deny all allegations, implications and inferences contained in
21 Paragraph 173.

22 174. Defendants are without information sufficient to admit or deny the present
23 demographic make-up of Fairbanks and therefore deny the allegations in Paragraph 174.
24

1 175. Defendants are without information sufficient to admit or deny the
2 allegations in Paragraph 175 at this time and therefore deny the same.

3 176. Defendants are investigating these allegations but are currently without
4 information sufficient to admit or deny the allegations in Paragraph 176 and therefore
5 deny the same.

6 177. Admit that Mike Pulice was the Public Safety Director for the City of
7 Fairbanks in 1997. All other allegations in this paragraph are denied.
8

9 178. Defendants deny the allegations in Paragraph 178.
10

11 179. Defendants deny the allegations in Paragraph 179.

12 180. Defendants deny the allegations in Paragraph 180.

13 181. Defendants deny the allegations in Paragraph 181.

14 182. Defendants deny the allegations in Paragraph 182.

15 183. Defendants deny the allegations in Paragraph 183.

16 184. Defendants deny the allegations in Paragraph 184.

17 185. Defendants deny the allegations in Paragraph 185.

18 186. Defendants deny the allegations in Paragraph 186.

19 187. Admit that James Hayes was the mayor of Fairbanks from approximately
20 1992 to 2001. Admit that in 2008, James Hayes was convicted of several crimes involving
21 conduct that occurred between 2001 and 2005 when he was no longer mayor, and was
22

1 sentenced to 66 months in federal prison. All other allegations, implications and
2 inferences in this paragraph are denied.

3 188. Defendants deny the allegations in Paragraph 188.

4 189. Defendants deny the allegations in Paragraph 189.

5 190. Defendants deny the allegations in Paragraph 190.

6 191. Defendants deny the allegations in Paragraph 191.

7 192. Defendants deny the allegations in Paragraph 192.

8 193. Defendants deny the allegations in Paragraph 193.

9 194. Defendants deny the allegations in Paragraph 194.

10 195. Admit that Ronald Otte is a former APD Police Chief and Commissioner
11 of Public Safety. Admit that Mr. Otte wrote an op-ed that was published by the Alaska
12 Dispatch News on or about December 14, 2015. The op-ed speaks for itself and is the
13 best evidence of its contents. All other allegations, implications, and inferences in this
14 paragraph and in Mr. Otte's op-ed are denied.

15 196. Admit that Mr. Otte wrote an op-ed that was published by the Alaska
16 Dispatch News on or about December 14, 2015. The op-ed speaks for itself and is the
17 best evidence of its contents. All other allegations, implications, and inferences in this
18 paragraph and in Mr. Otte's op-ed are denied.

19 197. Admit that former FPD Chief Randall Aragon resigned on or about October
20 28, 2016, while the City was investigating whether his secondary employment as a private

1 security consultant created a conflict of interest. All other allegations, implications and
2 inferences in this paragraph are denied.

3
4 198. Defendants deny the allegations in Paragraph 198.

5 199. Admit Ring shot and killed Henry H. Kettendorf, an Alaska Native, in the
6 line of duty in 1995. Deny all other allegations.

7 200. Defendants admit that Julie Miller identified the shooter as a person in a red
8 jacket from a block away. Defendants deny all allegations contained in Paragraph 200.

9
10 201. Defendants deny the allegations in Paragraph 201.

11 202. Admit that a jury found the shooting of Mr. Kettendorf to be justified. All
12 other allegations, implications and inferences in this paragraph are denied.

13 203. Defendants deny the allegations in Paragraph 203.

14 204. Defendants deny the allegations in Paragraph 204.

15 205. Defendants deny the allegations in Paragraph 205.

16 206. Defendants deny the allegations in Paragraph 206.

17 207. Defendants deny the allegations in Paragraph 207.

18
19 208. Admit that while arresting Kim Holcomb for trespassing after she refused
20 to leave a medical office, Ring unintentionally fractured Kim Holcomb's wrist. Deny all
21 other allegations contained in Paragraph 208.

22 209. Defendants deny the allegations in Paragraph 209.

23 210. Defendants deny the allegations in Paragraph 210.

1 211. Defendants deny the allegations in Paragraph 211.
2 212. Defendants deny the allegations in Paragraph 212.
3 213. Defendants deny the allegations in Paragraph 213.
4 214. Defendants deny the allegations in Paragraph 214.
5 215. Defendants deny the allegations in Paragraph 215.
6 216. Defendants deny the allegations in Paragraph 216.
7 217. Defendants deny the allegations in Paragraph 217.
8
9 218. Defendants deny there is or was disparate police treatment of Alaska
10 Natives in general, or of Plaintiffs in particular. Defendants are without information
11 sufficient to admit or deny the remaining allegations in Paragraph 218 and therefore deny
12 the same.
13
14 219. Defendants are without information sufficient to admit or deny the
15 allegations in Paragraph 219 and therefore deny the same.
16
17 220. Defendants are without information sufficient to admit or deny the
18 allegations in Paragraph 220 and therefore deny the same.
19
20 221. Defendants deny there is institutional racial bias within the FPD and deny
21 that the handling of Plaintiffs' case demonstrates institutional bias. Defendants are
22 without information sufficient to admit or deny the remaining allegations in Paragraph
23 221 and therefore deny the same.
24
25 222. Defendants deny the allegations in Paragraph 222.
26

223. The allegations in Paragraph 223 state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

DAMAGES

224. Defendants deny the allegations in Paragraph 224.

225. Defendants deny the allegations in Paragraph 225.

226. Defendants deny the allegations in Paragraph 226.

227. Defendants deny the allegations in Paragraph 227.

228. Defendants deny the allegations in Paragraph 228.

229. Defendants deny the allegations in Paragraph 229.

230. Defendants deny the allegations in Paragraph 230.

CAUSES OF ACTION

I. Violation of right not to be deprived of liberty as a result of the fabrication of evidence, right to fair trial, and right not to be deprived of liberty without due process of law under 42 U.S.C. § 1983

Defendants hereby incorporate their answers above.

231. Defendants deny the allegations in Paragraph 231.

232. Defendants deny the allegations in Paragraph 232.

233. Defendants deny the allegations in Paragraph 233.

234. Defendants deny the allegations in Paragraph 234.

235. Defendants deny the allegations in Paragraph 235.

236. Defendants deny the allegations in Paragraph 236.

1 237. Defendants deny the allegations in Paragraph 237.

2 238. Defendants deny the allegations in Paragraph 238.

3 239. Defendants deny the allegations in Paragraph 239.

4
5 **II. Malicious Prosecution under 42 U.S.C. § 1983**

6 Defendants hereby incorporate their answers above.

7 240. Defendants deny the allegations in Paragraph 240.

8 241. Defendants deny the allegations in Paragraph 241.

9 242. Defendants deny the allegations in Paragraph 242.

10 243. Defendants deny the allegations in Paragraph 243.

11 244. Defendants deny the allegations in Paragraph 244.

12 245. Defendants deny the allegations in Paragraph 245.

13 246. Defendants deny the allegations in Paragraph 246.

14 247. Defendants deny the allegations in Paragraph 247.

15
16
17 **III. Violation of affirmative obligation to come forward with exculpatory evidence**
18 **under 42 U.S.C. § 1983 under *Brady v. Maryland* and deprivation of Plaintiffs'**
19 **due process rights.**

20 Defendants hereby incorporate their answers above.

21 248. The allegations in Paragraph 248 state a legal conclusion to which no
22 response is required. To the extent a response is required, the allegations are denied. All
23 factual allegations in Paragraph 248 are denied.

24 249. Defendants deny the allegations in Paragraph 249.

1 250. Defendants deny the allegations in Paragraph 250.

2 251. Defendants deny the allegations in Paragraph 251.

3 252. Defendants deny the allegations in Paragraph 252.

4 253. Defendants deny the allegations in Paragraph 253.

5
6 **IV. Supervisory liability under 42 U.S.C. § 1983**

7 Defendants hereby incorporate their answers above.

8 254. Defendants deny the allegations in Paragraph 254.

9 255. Defendants deny the allegations in Paragraph 255.

10 256. Defendants deny the allegations in Paragraph 256.

11 257. Defendants deny the allegations in Paragraph 257.

12 258. Defendants deny the allegations in Paragraph 258.

13 259. The allegations in Paragraph 259 state a legal conclusion to which no
14 response is required. To the extent a response is required, the allegations are denied. All
15 factual allegations in Paragraph 259 are denied.

16
17
18 **V. Civil rights conspiracy claim under 42 U.S.C. § 1983**

19 Defendants hereby incorporate their answers above.

20 260. Defendants deny the allegations in Paragraph 260.

21 261. Defendants deny the allegations in Paragraph 261.

22 262. Defendants deny the allegations in Paragraph 262.

1 **VI. 42 U.S.C. § 1985(3) Conspiracy**

2 Defendants hereby incorporate their answers above.

3 263. Defendants deny the allegations in Paragraph 263.

4 264. Defendants deny the allegations in Paragraph 264.

5 265. Defendants deny the allegations in Paragraph 265.

6 **VII. Claim against the City of Fairbanks under 42 U.S.C. § 1983 and *Monell v.***
7 ***Department of Social Services***

8 Defendants hereby incorporate their answers above.

9 266. Defendants deny the allegations in Paragraph 266.

10 267. Defendants deny the allegations in Paragraph 267.

11 268. Defendants deny the allegations in Paragraph 268.

12 269. Defendants deny the allegations in Paragraph 269.

13 270. Defendants deny the allegations in Paragraph 270.

14 271. Defendants deny the allegations in Paragraph 271.

15 **VIII. Violation of right to access the courts under 42 U.S.C. § 1983 and the Alaska**
16 **Constitution**

17 Defendants hereby incorporate their answers above.

18 272. Defendants deny the allegations in Paragraph 272.

19 273. Defendants deny the allegations in Paragraph 273.

20 **IX. As to Vent and Frese, Violation of Fifth Amendment right not to be**
21 **prosecuted based on coerced or fabricated self-incriminatory statements**

22 Defendants hereby incorporate their answers above.

1 274. Defendants deny the allegations in Paragraph 274.

2 275. Defendants deny all allegations, implications and inferences contained in
3 Paragraph 275.
4

5 276. Defendants deny the allegations in Paragraph 276.

6 277. Defendants deny the allegations in Paragraph 277.

7 **X. Spoliation of evidence under Alaska law**

8 Defendants hereby incorporate their answers above
9

10 278. Defendants deny the allegations in Paragraph 278.

11 279. Defendants deny the allegations in Paragraph 279.

12 280. Defendants deny the allegations in Paragraph 280.
13

14 **XI. Negligence under Alaska law**

15 281. Plaintiffs' negligence claims have been dismissed with prejudice, and
16 therefore no response is required to the allegations in Paragraph 281. To the extent a
17 response is required, the allegations are denied.
18

19 282. Plaintiffs' negligence claims have been dismissed with prejudice, and
20 therefore no response is required to the allegations in Paragraph 282. To the extent a
21 response is required, the allegations are denied.
22

23 **XII. Intentional or Reckless Infliction of Emotional Distress under Alaska law**

24 283. Plaintiffs' intentional and reckless infliction of emotional distress claims
25 have been dismissed with prejudice, and therefore no response is required to the
26

1 allegations in Paragraph 283. To the extent a response is required, the allegations are
2 denied.

3
4 284. Plaintiffs' intentional and reckless infliction of emotional distress claims
5 have been dismissed with prejudice, and therefore no response is required to the
6 allegations in Paragraph 284. To the extent a response is required, the allegations are
7 denied.

8
9 285. Plaintiffs' intentional and reckless infliction of emotional distress claims
10 have been dismissed with prejudice, and therefore no response is required to the
11 allegations in Paragraph 285. To the extent a response is required, the allegations are
12 denied.

13
14 **AFFIRMATIVE DEFENSES**

15 1. Plaintiffs have failed to state, in whole or in part, a claim upon which relief
16 may be granted.

17 2. Fault should be allocated, in whole or in part, to Plaintiffs, the other
18 defendants, the State of Alaska, and/or to third parties.

19
20 3. The City's actions are protected, in whole or in part, by immunity.

21 4. Nolan, Geier, Ring, and Kendrick's actions are protected, in whole or in
22 part, by qualified immunity.

23
24 5. Plaintiffs' damages, if any, were caused, in whole or in part, by parties other
25 than the City, including the State of Alaska. The City does not prosecute murder charges
26

1 or influence the prosecution of the underlying charges at issue in this dispute.

2 6. Plaintiffs' damages, if any, were caused by superseding and/or intervening
3 acts over which the City had no control or responsibility.
4

5 7. The City was not the proximate cause of Plaintiffs' damages, if any.

6 8. Plaintiffs' claims are barred, in whole or in part, by the applicable statute(s)
7 of limitations and/or repose, and the applicable doctrines of laches, waiver, and estoppel.
8

9 9. No act or omission of Defendants was malicious, willful, wanton, reckless,
10 or grossly negligent, and, therefore, any award of punitive or exemplary damages is barred
11 and/or limited under applicable law or statute or, in the alternative, are unconstitutional
12 insofar as they violate the due process protections afforded by the United States
13 Constitution, the excessive fines clause of the Eighth Amendment of the United States
14 Constitution, the Commerce Clause of the United States Constitution, and the Full Faith
15 and Credit Clause of the United States Constitution.
16

17 10. Defendants reserve the right to assert additional affirmative defenses as
18 warranted after discovery.
19

20 **COUNTERCLAIM**

21 **Breach of Contract – Specific Performance of Settlement Agreements**

22 1. Paragraphs 8-11 and 13-22 of the above Answer are incorporated to the
23 extent admitted above.
24
25
26

1 2. Marvin Roberts, George Frese, Kevin Pease and Eugene Vent were
2 convicted of the October 11, 1997 murder of John Hartman. Each of their convictions
3 was affirmed on direct appeal. Thereafter, each Plaintiff filed multiple Petitions for
4 Post-Conviction Relief (“PCR”).

5
6 3. In December 2015, after a PCR hearing had concluded but before a ruling
7 was issued by the court, Plaintiffs and the State of Alaska initiated settlement
8 discussions. Those settlement discussions lasted for a week or more before the parties
9 and all of their counsel attended a mediation aimed at reaching a settlement. A recently-
10 retired superior court judge served as the mediator for the parties, and valid and
11 enforceable written settlement agreements collaboratively drafted during the mediation
12 by counsel for each Plaintiff and the State were executed on or about December 9, 2015.
13 Defendant City of Fairbanks later signed the Agreements.

14
15
16 4. Each Plaintiff and their respective counsel willingly signed a Settlement
17 Agreement.

18
19 5. The Settlement Agreements were subsequently entered into the superior
20 court record under judicial supervision.

21 6. Under the terms of the Settlement Agreements, each Plaintiff covenanted
22 not to bring any further legal action arising out of the murder of John Hartman or
23 Plaintiff’s arrest, prosecution or imprisonment and expressly waived any claims against
24 the City and its officers.
25

1 7. Under the terms of the Settlement Agreements, the State of Alaska was
2 obligated to dismiss the indictments against each Plaintiff with prejudice, and not seek
3 retrial absent substantial new evidence of guilt being discovered.
4

5 8. The State of Alaska fulfilled all of its duties under the Settlement
6 Agreements. The City is a party to and/or beneficiary of each Settlement Agreement.
7 Defendants Nolan, Kendrick, Ring, and Geier are beneficiaries of each Settlement
8 Agreement.
9

10 9. Plaintiffs have failed to fulfill their duties under the Settlement
11 Agreements by taking actions directly contrary to their covenants to refrain from
12 bringing further action against the City and its present or former employees arising out
13 of the murder of John Hartman or Plaintiffs' arrests, prosecution or imprisonment.
14

15 10. The terms of the Settlement Agreements are sufficiently certain to
16 support an action for specific performance. The specific performance requested is
17 identical to that required by the Settlement Agreements.
18

19 11. The Settlement Agreements are voluntary, just and reasonable as to
20 Plaintiffs.

21 12. Defendants are entitled to specific performance because there is no
22 adequate remedy at law for Plaintiffs' breach. Money damages would be inadequate to
23 compensate Defendants for Plaintiffs' failure to adhere to their obligation not to sue
24 because the benefits of final resolution of a matter and litigation expense avoidance,
25
26

1 among others, are lost when Plaintiffs are not required to adhere to their obligation not
2 to sue Defendants.

3
4 **REQUEST FOR RELIEF**

5 WHEREFORE, Defendants request the following relief:

6 1. That the Second Amended Complaint against them be dismissed with
7 prejudice and judgment be entered for Defendants in this matter.

8 2. That Defendants be awarded specific performance of the Settlement
9 Agreements.

10 3. That Defendants be awarded their costs and fees incurred in defending this
11 action, as permitted by court rules and law.

12 4. That the Court order such other and further relief as it may deem equitable
13 and just.

14 DATED at Anchorage, Alaska this 23rd day of April, 2021.

15
16
17 SCHWABE, WILLIAMSON & WYATT PC
18 Attorneys for Defendant City of Fairbanks

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Attorney for Officer Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF electronically on the following counsel of record:

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